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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,799	10/29/2003	Jean Pierre Fichou	243839US0CONT	6068
22850	7590	02/28/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			COONEY, JOHN M	
			ART UNIT	PAPER NUMBER

1711

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/694,799

Applicant(s)

FICHOU ET AL.

Examiner

John m Cooney

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 35-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 35-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/719,574.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

HL

Applicant's arguments filed 12-15-04 have been fully considered but they are not persuasive.

All rejections are hereby withdrawn in light of applicants' amendments canceling rejected claims, applicants' filing of a Terminal Disclaimer, or reconsideration and establishment of the new grounds of rejection set forth below.

***Claim Rejections - 35 USC § 103***

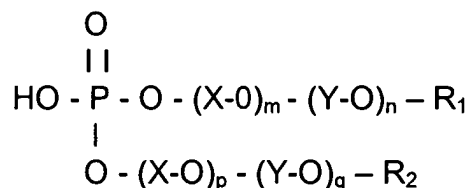
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0,726,298 in view of Marx et al.(4,304,708).

EP-0,726,298 discloses methods of treating a mineral filler using at least one organic phosphate agent for treatment purposes, in conjunction with a treated mineral filler, for producing a suspension of mineral filler in polyols which have a high filler content and a low viscosity and the employment of the treated charges in the manufacturing flexible, semi-rigid or rigid polyurethane foam (see the entire document and applicants' admissions of record at page 3 of the instant specification). According to EP-0,726,298 the mineral fillers are treated with a view to placing them in suspension in the polyols with the aid of at least one organic phosphate agent for treatment purposes, having the general formula (1): {see next page}

Art Unit: 1711



where  $\text{R}_1$  = either H or alkyl with 8 to 40 carbon atoms or aryl or alkylaryl or arylalkyl with 6 to 40 carbon atoms

where  $\text{R}_2$  = either alkyl with 8 to 40 carbon atoms or aryl or alkylaryl or arylalkyl with 6 to 40 carbon atoms

$\text{X} = -\text{CH}_2-\text{CH}_2-$

$\text{Y} = \text{CH}(\text{CH}_3)-\text{CH}_2-$  or  $-\text{CH}_2-\text{CH}(\text{CH}_3)-$

$(m+n)$  varies from 0 to 30 where  $m$  is less than or equal to 30 and  $n$  is less than or equal to 30

$(p+q)$  varies from 0 to 30 where  $p$  is less than or equal to 30 and  $q$  is less than or equal to 30.

EP-0,726,298's disclosure differs from applicants' claims in that a deagglomeration/crushing operation is not specifically disclosed or required. However, Marx et al. (4,304,708) discloses the crushing of inorganic particles used in polyol dispersions for polyurethane foam manufacture via wet and/or dry crushing in various mills including pin and attrition mills for the purpose of improving storage stability and reducing sedimentation in dispersions obtained. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the deagglomeration/crushing operations for inorganic fillers disclosed by Marx et al. in the treating operations and product work-ups of EP-0,726,298 for the purpose of enhancing

Art Unit: 1711

storage stability and reducing sedimentation effects in materials rendered in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 and 35-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,765,032 in view of Marx et al.

Claims 1-11 of U.S. Patent No. 6,765,032 disclose polyurethane foams prepared utilizing treated mineral charges treated with organic phosphate agents meeting those defined by the claims wherein the treated mineral charges are prepared in the manner as claimed by applicants with the difference being that a deagglomeration/crushing operation is not specifically disclosed or required by the claims of 6,765,032. However, Marx et al. (4,304,708) discloses the crushing of inorganic particles used in polyol

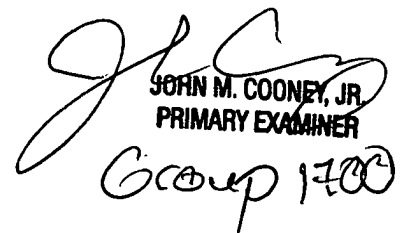
Art Unit: 1711

dispersions for polyurethane foam manufacture via wet and/or dry crushing in various mills including pin and attrition mills for the purpose of improving storage stability and reducing sedimentation in dispersions obtained. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the deagglomeration/crushing operations for inorganic fillers disclosed by Marx et al. in the treating operations and product work-ups of the claims of 6,765,032 for the purpose of enhancing storage stability and reducing sedimentation effects in materials rendered in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
Group 1700